

Bryan W. Shaw, Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
Jon Niermann, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 27, 2017

The Honorable Dawn Buckingham
Texas Senate
P.O. Box 12068
Austin, Texas 78711-2068

Re: Correction to Response to Questions Regarding Application for Air Quality Standard Permit
Asphalt Inc., LLC; Registration No. 148112; RN109902312; Burnet County

Dear Senator Buckingham:

It has been brought to my attention there was an error in Response No. 10 of my October 19, 2017 letter to you regarding the above-referenced application for a permanent rock crusher. Controls required for a concrete batch plant, and not a rock crusher, were mentioned in the response. We have also clarified the distance of the entrance to the proposed plant in regards to the Baylor Scott & White Medical Center.

Enclosed please find the updated response. We hope this information is helpful to you and your constituents. Please be assured that the Texas Commission on Environmental Quality recognizes your concerns. If you have any further questions, please contact Mr. Michael Wilson, P.E., at (512) 239-1922.

Sincerely,

A handwritten signature in black ink, appearing to read "R. A. Hyde". The signature is fluid and cursive, with the first letters of each name being capitalized and prominent.

Richard A. Hyde, P.E.
Executive Director

Enclosure

Questions

Asphalt Inc., LLC applied to the Texas Commission on Environmental Quality (TCEQ) to register a rock crusher under the Permanent Rock and Concrete Crushing Standard Permit (https://www.tceq.texas.gov/assets/public/permitting/air/NewSourceReview/Mechanical/perm_crushsp.pdf). The application for Registration No. 148112 was received on August 14, 2017. All responses to the following questions are in regards to this application.

1. Is it possible to request a contested case hearing for a rock crusher authorization?

The Air Quality Standard Permit for Permanent Rock and Concrete Crushers ("standard permit") does not provide an opportunity for a contested case hearing.

2. What does the agency expect to accomplish with an informational meeting?

The informational meeting is an opportunity for the public to ask questions of TCEQ staff regarding the application. TCEQ staff will also be available to answer questions about the air standard permit and other areas regulated by the TCEQ. The applicant is invited to attend the informational meeting and may also provide information about the proposed facility, but is not required to attend or participate in the meeting. The applicant has told TCEQ they will attend the meeting on October 26, 2017.

3. Will citizens be able to comment or ask questions at the informational meeting?

Members of the public will be provided an opportunity to ask TCEQ staff questions and provide written comments. Any comments submitted at the meeting in writing will be included and answered in the formal Response to Comments (RTC) document prepared by the TCEQ. The RTC will be mailed to everyone who commented on the application or who requested to be on the mailing list for the application. As noted above, the applicant plans to attend the meeting and may be available to answer questions.

4. How does the TCEQ inspect these types of facilities to ensure they are complying with the permit?

Asphalt Inc., LLC has applied to the TCEQ for issuance of an Air Quality Standard Permit which would authorize construction of a permanent rock crusher. This permit contains operational requirements such as: distance limits, operating hours, and throughput limits, (amount of material permitted to be processed per day), and requires emissions controls to minimize dust. It is the permit holder's responsibility to demonstrate compliance with all conditions of their permit and to have records available upon request by the executive director or any air pollution control agency having jurisdiction to request a compliance demonstration.

The activities at a site determine which regulatory programs are applicable. Depending on the program and type of facility, a prescribed inspection frequency may be required as part of federal grant deliverables or may be required by Texas law. The types of operations at Asphalt Inc., LLC's proposed location in Marble Falls are not on a set schedule for compliance investigations. Air investigations for concrete/rock crushing sites are generally conducted in response to complaints or by request from the TCEQ Air Permits Division for a site review to verify conditions at the site.

Complaint investigations are unannounced, and no prior notification is provided to the facility. Prior notification is provided for regularly scheduled investigations. If a facility has

a documented history of continued noncompliance, regularly scheduled investigations may be initiated.

Investigations are conducted to evaluate compliance with state and federal regulations and permit requirements. These investigations entail site observations as well as reviewing daily operating records. Also, distance requirements between the site's equipment and potential receptors are determined to ensure minimum distance requirements, where applicable, are met and maintained.

The TCEQ also regulates stormwater from this type of operation during construction activities and operation of the rock crusher. Prior to commencement of construction activities, Asphalt Inc., LLC may need to submit an application for coverage under the stormwater Construction General Permit (CGP) TXR150000 based on the size of land disturbed. In addition, based on Asphalt Inc., LLC's representations in the registration application for the pending standard permit, the location in Marble Falls will require coverage under the Multi-Sector General Permit (MSGP) TXR050000 prior to beginning operations.

Water investigations for concrete/rock crushing sites are also generally conducted in response to complaints. The complaint investigation may also include a comprehensive review of facility and associated storm water permit requirements including, but not limited to, operational standards, development and implementation of a Storm Water Pollution Prevention Plan, sampling, training, and inspections. Apart from the on-site investigations, record reviews may also be conducted at TCEQ regional offices. Record review investigations mainly focus on record keeping and operating reporting requirements.

As needed, follow-up investigations are conducted to verify cited violations have been resolved or to document the violations are still outstanding for referral to the TCEQ Enforcement Division.

Future activities at the site may require other authorizations.

5. What enforcement measures can be taken if the plant is not operating in compliance?

The TCEQ's enforcement process begins when a violation is discovered during an investigation conducted either at the regulated entity's location or through a review of records at TCEQ offices. For documented violations, the TCEQ follows its "Enforcement Initiation Criteria" to determine the appropriate course of action to pursue. This document may be found at the following link:

<https://www.tceq.texas.gov/compliance/enforcement/eic.html>. To promote consistency in addressing air, water, and waste violations, the criteria specified in this document are used to determine the appropriate level of enforcement action.

Documented violations are addressed by an enforcement action, which is initiated either through the issuance of a Notice of Violation (NOV) or the issuance of a Notice of Enforcement (NOE). An NOV lists the alleged violations discovered during the investigation, specifies a time frame to respond and requires documentation of compliance. Most violations are quickly corrected in response to NOV's. If an entity receives an NOV and fails to achieve compliance within a specified timeframe, the matter may be referred for formal enforcement. An NOV does not contain administrative penalties but does become part of a regulated entity's compliance history.

For more serious or continuing violations identified during an investigation, the TCEQ initiates formal enforcement, and the business or individual investigated receives an NOE. The issuance of an NOE begins formal enforcement, which is a process that results in an

administrative order and an administrative penalty. The NOE lists the alleged violations and puts the recipient on notice that (a) violation(s) have been referred to the TCEQ's Enforcement Division for development of an order and administrative penalty. The notice also provides information on the appeal process if violations are believed to be cited in error or if new information is available.

If the violation(s) meet the criteria for formal enforcement, the amount of the penalty is dependent on the violation cited and the applicable statutory authority. The Commission uses its Penalty Policy, which is available on the TCEQ's website at: <http://www.tceq.texas.gov/publications/rg/rg-253.html>, to determine penalty amounts.

The Penalty Policy is based on a number of statutes that give the Commission the authority to assess administrative penalties, including penalty minimums and maximums, as well as other factors that must be considered in determining a penalty amount. These statutes include Texas Water Code Chapters 7, 11, 12, 13, 16, and 28A; Texas Health & Safety Code Chapters 341 and 371; and, Texas Transportation Code Chapter 548.

If the Executive Director and the respondent agree to settle the enforcement order, the matter is published in the *Texas Register* for a 30-day public comment period, prior to the matter being scheduled for an Executive Director's or Commissioner's agenda for consideration.

If settlement cannot be reached on the proposed order and penalty, the case is referred to the TCEQ's Litigation Division and may result in an evidentiary hearing (contested case process). The hearing process is governed by the Administrative Procedures Act (Gov't Code Ch. 2001) as well as TCEQ rules and procedural rules adopted by the State Office of Administrative Hearings.

The TCEQ may also refer violations to the Office of the Attorney General for enforcement in state district court which may include injunctive relief and civil penalties.

6. Who should citizens call if they have questions about how the plant is operating or if they see dust leaving the property?

Individuals are encouraged to report any nuisance issues concerning air or water quality or suspected noncompliance with the terms of any authorization or other environmental regulation or to ask questions regarding Asphalt Inc., LLC plant operations by contacting the TCEQ Austin Regional Office at (512) 339-2929 or by calling the 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186. Complaints may also be filed by visiting the following TCEQ web page: www.tceq.texas.gov/complaints. The TCEQ reviews all complaints that fall within its jurisdiction. If the plant is found to be out of compliance with the terms and conditions of the permit, or applicable TCEQ regulations, it may be subject to an enforcement action.

7. Are citizens able to gather facts, information, or evidence if they see conditions at the plant they think may be a violation?

Yes, citizen-collected evidence may be used if citizens suspect the plant is operating in violation of the standard permit and/or TCEQ rules. See Title 30 Texas Administrative Code (30 TAC) § 70.4, Enforcement Action Using Information Provided by Private Individual, for details on gathering and reporting such evidence. Under the citizen-collected evidence program, individuals are providing information on possible violations of environmental law and the information can be used by the TCEQ to pursue enforcement. In this program, citizens can become involved and may eventually testify at a hearing or trial concerning the violation. For additional information, see the TCEQ publication, "Do You Want to Make an

Environmental Complaint? Do You Have Information or Evidence?" This booklet is available in English and Spanish from the TCEQ Publications office at 512-239-0028 and may be downloaded from the agency website at www.tceq.texas.gov (under Publications, search for Publication Number 278).

8. Does the TCEQ have an ambient air monitor in the area? If so, what is the air quality of the area?

The TCEQ does not operate an air quality monitor in the immediate area of the proposed facility. Particulate monitoring is conducted at the TCEQ's Austin Audubon monitoring site, located approximately 25 miles to the east of Asphalt Inc., LLC's proposed location. Historically, particulate concentrations measured at the Austin Audubon location have been below the federal air quality standards. Given the rural nature of the area and limited number of industrial sources, the TCEQ would not expect any potential air quality concerns in the area of the proposed facility.

9. What type of analysis was conducted to ensure the plant will not cause public health problems?

A protectiveness review was conducted during the development of the Air Quality Standard Permit for Permanent Rock and Concrete Crushers. The standard permit was effective on July 31, 2008. The purpose of the protectiveness review is to ensure emissions from facilities authorized under the standard permit are protective of human health and the environment no matter where in the state it is located.

The standard permit protectiveness reviews considered numerous variables including: emission source types and associated emission parameters, meteorological data, a receptor grid, and model use and techniques. The TCEQ developed the protectiveness review based on modeling that was inherently conservative and tends to over-predict ground-level concentrations of emissions from the proposed facility. The TCEQ applied the model in a screening mode to ensure predictions were conservative (higher predicted concentrations) and applicable for any location in the state. In addition, all emissions sources were co-located in order to minimize bias due to source configuration and wind direction. This technique also provides conservative results since the impact from all sources is maximized.

The standard permit contains technical requirements designed to ensure facilities authorized under the standard permit achieve emissions standards determined to be protective of human health and the environment.

10. There is a hospital near the proposed facility. How will the dust from the plant affect the patients and staff?

The most common health concerns expressed about crushing operations relate to visible particulate matter (PM) and the potential exposure to silica. Although visible particulate matter can be a nuisance, most of the particles emitted during the crushing process are too large to be inhaled and are therefore not directly toxic. Due to their size, these large particles typically fall onto the ground close to the source, limiting off-property impacts. Additionally, the standard permit requires substantial dust control processes to minimize dust issues including watering in-plant roads and work areas, and using water sprays on stockpiles. Only particles smaller than 10 micrometers in size (1/7th the thickness of a human hair) can be inhaled, and only particles smaller than 2.5 micrometers can get deep into the lungs. The standard permit requirements ensure that concentrations of small particles that are able to be inhaled (PM₁₀ and PM_{2.5}) are below federal air quality standards

set to protect public health. The standard permit also evaluated the impact to air quality if the crushed material had up to 20% silica, which is a very conservative assumption. The model predicted the maximum one-hour and maximum annual concentrations of silica would be half of the TCEQ's health-based screening values. Based on the TCEQ's conservative modeling analysis, we are confident when a company operates in compliance with the standard permit, there should be no deterioration of air quality that would cause health effects to the surrounding community, including the patients and staff at the hospital. The Baylor Scott & White Medical Center is located approximately three miles from the entrance of the proposed site location; therefore, any potential dust from the proposed site would not harm the patients and staff of the hospital.

11. What operating restrictions will the plant have?

Rock Crushing plants operating under the standard permit have the following operating restrictions:

- Restricted throughput of 200 tons/hour;
- Any crusher, screen, or engine must be located no less than 200 feet from the nearest property line;
- Stockpiles and other work areas must be located no less than 100 feet from the nearest property line;
- Any crusher must be located no less than 440 yards from a residence, school, or place of worship;
- Restricted to 1 primary crusher, 1 secondary crusher, 2 screens, and 1 internal combustion engine with < 1,000 horsepower;
- Plant may not operate 1 hour after sunset and 1 hour before sunrise;
- Restricted to operating no more than 2,640 hours in any rolling 12 month period; and,
- Stockpiles are restricted to 45 feet in height.

12. Does the plant need any other authorizations to operate?

Based on the representations in the pending standard permit application for Asphalt Inc., LLC, the company may be required to register for authorization under the stormwater construction general permit (CGP) TXR150000. The CGP regulates the discharge of pollutants within stormwater resulting from construction activities and requires that a Stormwater Pollution Prevention Plan (SWP3) be developed and implemented prior to the commencement of construction.

The company would also be required to submit a Notice of Intent (NOI) to obtain authorization under the stormwater MSGP. The MSGP regulates the discharge of pollutants within stormwater runoff from certain industrial activities and requires that a SWP3 be developed and implemented. The TCEQ would review compliance with the SWP3(s) during on-site investigations.

Additionally, quarries located in the state of Texas must be registered with the TCEQ under the Aggregate Production Operations (APOs) as required by Tex. Water Code Ch. 28A and 30 Tex. Admin. Code § 342.25. APOs are sites from which aggregates are being or have been removed or extracted from the earth, including the entire areas of extraction, stripped areas, haulage ramps, and the land on which the plant processing the raw materials is

located, exclusive of any land owned or leased by the responsible party not being currently used in the production of aggregates.

13. What can be done about the traffic in the area as a result of the plant's operations?

The TCEQ does not have regulatory jurisdiction over truck traffic. Trucks are considered mobile sources, which are not regulated by the TCEQ. However, TCEQ rules prohibit anyone from causing a traffic hazard. Specifically, 30 TAC § 101.5 states, "No person shall discharge from any source whatsoever such quantities of air contaminants, uncombined water, or other materials which cause or have a tendency to cause a traffic hazard or an interference with normal road use."

Jurisdiction over traffic on public roads, including any load-bearing restrictions and public safety, including access, speed limits, and public roadway issues, are typically the responsibility of local, county, or other state agencies, such as the Texas Department of Transportation and the Texas Department of Public Safety. An air quality permit does not authorize a violation of any road safety or load-bearing restrictions. Concerns regarding roads should be addressed to appropriate state or local officials. Any traffic concerns may be addressed by local officials or otherwise limited by local ordinances.



DAWN BUCKINGHAM
STATE SENATOR

October 20, 2017

**Senator Dawn Buckingham Statement on
Questions Raised About TCEQ Permit # 148112**

In response to an outpouring of phone calls, letters and emails from many of my constituents in Senate District 24 concerned about an air quality permit application pending before the Texas Commission on Environmental Quality, I want to share the responses my office has received from TCEQ to questions related to this permit.

This is an official public document and you are free to share, reprint or republish these responses to provide maximum transparency on this issue prior to a TCEQ informational meeting scheduled for October 26 at 7 pm, at the Lakeside Pavillion, 307 Buena Vista, in Marble Falls.

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 19, 2017

The Honorable Dawn Buckingham
Texas Senate
P.O. Box 12068
Austin, Texas 78711-2068

Re: Response to Questions Regarding Application for Air Quality Standard Permit
Asphalt Inc., LLC; Registration No. 148112; RN109902312; Burnet County

Dear Senator Buckingham:

Thank you for your questions regarding the above-referenced application for a permanent rock crusher. The application is currently under review and, as you are aware, an informational meeting is scheduled for October 26, 2017, and the public comment period has been extended to October 31, 2017.

Please find enclosed responses to the questions raised in your October 6, 2017 letter. We hope this information is helpful to you and your constituents. Please be assured that the Texas Commission on Environmental Quality recognizes your concerns. If you have any further questions, please contact Mr. Michael Wilson, P.E., Director of the Air Permits Division, at (512) 239-1922.

Sincerely,

A handwritten signature in black ink, appearing to read "R. A. Hyde".

Richard A. Hyde, P.E.
Executive Director

Enclosure

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The Penalty Policy is based on a number of statutes that give the Commission the authority to assess administrative penalties, including penalty minimums and maximums, as well as other factors that must be considered in determining a penalty amount. These statutes include Texas Water Code Chapters 7, 11, 12, 13, 16, and 28A; Texas Health & Safety Code Chapters 341 and 371; and, Texas Transportation Code Chapter 548.

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The standard permit protectiveness reviews considered numerous variables including: emission source types and associated emission parameters, meteorological data, a receptor grid, and model use and techniques. The TCEQ developed the protectiveness review based on modeling that was inherently conservative and tends to over-predict ground-level concentrations of emissions from the proposed facility. The TCEQ applied the model in a screening mode to ensure predictions were conservative (higher predicted concentrations) and applicable for any location in the state. In addition, all emissions sources were co-located in order to minimize bias due to source configuration and wind direction. This technique also provides conservative results since the impact from all sources is maximized.

The standard permit contains technical requirements designed to ensure facilities authorized under the standard permit achieve emissions standards determined to be protective of human health and the environment.

10. There is a hospital near the proposed facility. How will the dust from the plant affect the patients and staff?

The most common health concerns expressed about crushing operations relate to visible particulate matter (PM) and the potential exposure to silica. Although visible particulate matter can be a nuisance, most of the particles emitted during the crushing process are too large to be inhaled and are therefore not directly toxic. Due to their size, these large particles typically fall onto the ground close to the source, limiting off-property impacts. Additionally, the standard permit requires substantial dust control processes to minimize dust issues including paving in-plant roads and work areas, using water sprays on stockpiles, and using a suction shroud and three-sided curtain to prevent flyaway dust. Only particles smaller than 10 micrometers in size (1/7th the thickness of a human hair) can be inhaled, and only particles smaller than 2.5 micrometers can get deep into the lungs. The standard permit requirements ensure that concentrations of small particles that are

able to be inhaled (PM₁₀ and PM_{2.5}) are below federal air quality standards set to protect public health. The standard permit also evaluated the impact to air quality if the crushed material had up to 20% silica, which is a very conservative assumption. The model predicted the maximum one-hour and maximum annual concentrations of silica would be half of the TCEQ's health-based screening values. Based on the TCEQ's conservative modeling analysis, we are confident when a company operates in compliance with the standard permit, there should be no deterioration of air quality that would cause health effects to the surrounding community, including the patients and staff at the hospital. The Baylor Scott & White Medical Center is located approximately three miles from the proposed site location; therefore, any potential dust from the proposed site would not harm the patients and staff of the hospital.

11. What operating restrictions will the plant have?

Rock Crushing plants operating under the standard permit have the following operating restrictions:

- Restricted throughput of 200 tons/hour;
- Any crusher, screen, or engine must be located no less than 200 feet from the nearest property line;
- Stockpiles and other work areas must be located no less than 100 feet from the nearest property line;
- Any crusher must be located no less than 440 yards from a residence, school, or place of worship;
- Restricted to 1 primary crusher, 1 secondary crusher, 2 screens, and 1 internal combustion engine with < 1,000 horsepower;
- Plant may not operate 1 hour after sunset and 1 hour before sunrise;
- Restricted to operating no more than 2,640 hours in any rolling 12 month period; and,
- Stockpiles are restricted to 45 feet in height.

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areas, haulage ramps, and the land on which the plant processing the raw materials is located, exclusive of any land owned or leased by the responsible party not being currently used in the production of aggregates.

13. What can be done about the traffic in the area as a result of the plant's operations?

The TCEQ does not have regulatory jurisdiction over truck traffic. Trucks are considered mobile sources, which are not regulated by the TCEQ. However, TCEQ rules prohibit anyone from causing a traffic hazard. Specifically, 30 TAC § 101.5 states, "No person shall discharge from any source whatsoever such quantities of air contaminants, uncombined water, or other materials which cause or have a tendency to cause a traffic hazard or an interference with normal road use."

Jurisdiction over traffic on public roads, including any load-bearing restrictions and public safety, including access, speed limits, and public roadway issues, are typically the responsibility of local, county, or other state agencies, such as the Texas Department of Transportation and the Texas Department of Public Safety. An air quality permit does not authorize a violation of any road safety or load-bearing restrictions. Concerns regarding roads should be addressed to appropriate state or local officials. Any traffic concerns may be addressed by local officials or otherwise limited by local ordinances.